

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Currently there is no waiver service that pays for the 24-hour-per-day on-call aspect of an assisted living facility (ALF) for elderly waiver members. The only waiver avenues for ALF payment are consumer-directed attendant care (CDAC) (hands-on services), personal emergency response systems (PERS), and home-delivered meals. The nature of an ALF is that staff must be available 24 hours per day to meet the needs of the members. The definition of the current waiver services does not allow a per diem payment for on-call staff.

In addition, the federal Medicaid agency, the Centers for Medicare and Medicaid Services (CMS), has been strongly encouraging states to discontinue any policy that allows ALFs to bill CDAC services as one unit per month, regardless of the amount of service provision, for the balance of the waiver maximum. Iowa Medicaid has determined that ALF CDAC will be changed to a 15-minute unit with a corresponding 15-minute fee (to be addressed in another rule making). The application of this CDAC definition change has the potential to drastically reduce monthly payments to ALFs. Creating a new service at the same time will allow the member and provider to appropriately access maximized waiver funding.

Waiver funding may be transferred from CDAC to the on-call service. There should be minimal impact on members because the waiver will continue to pay for necessary CDAC, PERS, or meal services in addition to the on-call service. Providers will experience a change in the way they bill services to Medicaid.

The state will offer services through assisted living facilities that are in line with current guidance from the Centers for Medicare and Medicaid Services.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0366C** on October 3, 2012. The Department received comments from two organizations on this rule making. The first comment from both parties thanked the Department for instituting the assisted living on-call service.

Both commenting parties also requested that the upper limit for on-call services be set at \$31 per day. They stated that the upper limit rate of \$25 per day was initially determined in early 2011 and does not account for increased costs incurred by providers. The Department stated that, when setting the per diem rate for on-call services, Iowa Medicaid Enterprise (IME) staff wanted to ensure that there would continue to be funding available for other waiver services frequently accessed by assisted living tenants under the elderly waiver program. Those services are CDAC, PERS, transportation, and home-delivered meals. At the time of rate determination, IME staff did not calculate an on-call rate based on a target percentage of the waiver maximum, but set a rate that would allow members with greater needs to receive additional support services at levels not normally associated with assisted living programs. No change to the proposed amendments was made as the result of these comments.

Comment three was that this would be an opportune time to add reimbursement for nursing services under the home- and community-based services (HCBS) elderly waiver program in assisted living. Currently only home health agencies can be reimbursed for nursing services. The commenting parties recommended that elderly waiver beneficiaries in assisted living have nursing services reimbursed by the elderly waiver program. The Department responded that this suggestion is not consistent with the intent or scope of these amendments. These amendments are not intended in any way to alter the eligibility criteria to provide any other service under Iowa Medicaid. No change to the proposed amendments was made as the result of these comments.

Comment four was that, with this new assisted living on-call service, the Department will need to allow all assisted living providers along with the case managers to revise the Department’s service plan and CDAC agreements to add this new service, with the understanding that the reimbursement

for services remains subject to the \$1,300 monthly upper limit for elderly waiver services. In response, the Department stated that whenever the Department adds a new service to a waiver, the case manager is able to add that service to the service plan for any member who wishes to have the service and has an assessed need for that service. There are no barriers to case managers working with ALFs and members to alter service plans to accommodate the new service. No action or rule is needed to require this action as it is already available to all case managers, members, and providers.

The IME has planned a webinar and informational releases to explain the new assisted living on-call service to ALFs and case managers. The training and information will be communicated early in 2013 before the effective date of these amendments.

Comment five concerned the Department's expressed intent to discontinue the policy allowing assisted living programs to bill services as one unit per month and to change to a 15-minute unit with a corresponding 15-minute fee. The preamble of the Notice states "the application of this CDAC definition change has the potential to drastically reduce monthly payments to [assisted living programs]". The commenting agency expressed concern that the implementation of the 15-minute documentation policy will significantly increase paperwork for programs and will result in a net monetary loss for providers, even with the new add-on. The Department responded that the change from the monthly billing unit to a 15-minute billing unit is outside the scope of this rule making but was mentioned only as an explanation as to why the new service was created by the Department. The rule making containing the unit change will be Noticed for public comment; comments should be made to the Department at that time. No change to the proposed amendments was made as the result of these comments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 12, 2012.

These amendments do not provide for waivers in specified situations because Medicaid has determined that the amendments should be applicable to all members and providers who are eligible. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective March 1, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 77.33(23):

77.33(23) Assisted living on-call service. Assisted living on-call service providers shall be assisted living programs that are certified by the department of inspections and appeals under 481—Chapter 69.

ITEM 2. Adopt the following **new** subrule 78.37(18):

78.37(18) Assisted living on-call service. The assisted living on-call service provides staff on call 24 hours per day to meet a member's scheduled, unscheduled, and unpredictable needs in a manner that promotes maximum dignity and independence and provides safety and security. A unit of service is one day. To determine units of service provided, the provider will use census information based on member bed status each day.

ITEM 3. Amend subrule **79.1(2)**, provider category "HCBS waiver services providers," by adopting the following **new** numbered paragraph "35":

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
--------------------------	-------------------------------	--------------------

35. Assisted living on-call
service providers
(elderly waiver only)

Fee agreed upon by
member and provider.

\$25.00 per day.

[Filed 12/12/12, effective 3/1/13]

[Published 1/9/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/9/13.